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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE and TIME:
NOVEMBER 18, 2016 AT 10:00 AM

In re AHMAD SALEHZADEH, Debtor.	CHAPTER 11 CASE NO.: 14-22666 (RDD)

THE DEBTOR'S OPPOSITION TO THE MOTION TO VACATE THE AUTOMATIC STAY OF WESTBROOK TENANTS CORP. AND REQUEST THAT THE COURT DIRECT THAT WESTBROOK TENANTS CORP. ACCEPT PAYMENT AND COOPERATE WITH THE DEBTOR

**TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE**

AHMAD SALEHZADEH, the debtor herein (the "Debtor"), by and through his counsel, **PENACHIO MALARA, LLP**, in opposition to the motion of **WESTBROOK TENANTS CORP.** ("Westbrook") to vacate the automatic stay with respect to units 2F, 2P and 3K in the Cooperative Building at 10 Franklin Avenue, White Plains, New York respectfully sets forth as follows:

I. INTRODUCTION

1. Westbrook's motion should be denied for several reasons. First, the Debtor has tendered payment to Westbrook. Westbrook has apparently refused to negotiate the checks. Counsel instructed the Debtor to bring the checks to her office and is forthwith tendering them to counsel for Westbrook. Copies of the checks, which are being forwarded to counsel for Westbrook, are annexed hereto as Exhibit A.

2. Second, there is substantial equity in the properties in issue, two of which are not subject to mortgages. As discussed more fully below, the Debtor has accepted offers for a sale and contracts have been circulated.

3. Third, the Debtor is concerned that Westbrook's actions may appear to be acting in contravention of the Debtor's interests. According to the real estate broker, Christa Graham, Westbrook made several offers to purchase the units. After those offers were rejected as too low, according to the Debtor, Westbrook suggested that it would gain control of the units regardless. The Debtor believes that Westbrook may have failed to negotiate his payment as tactic to pressure him into agreeing to sell the units to it for a lower price.

II. BACKGROUND

4. On or about May 14, 2014, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, as amended (the "Bankruptcy Code"), with the Clerk of this Court and the case was referred to the Bankruptcy Judge herein.

5. Since the filing, the Debtor has remained in control and management of his financial affairs, as a Debtor in possession in accordance with 11 U.S.C. §§ 1107 and 1108.

6. No Trustee or examiner has been appointed.

7. The Debtor's assets consist of interests in various Subway franchises and the apartments. The Debtor's financial reverses were caused by a combination of factors, most notably, setbacks in his business, tax issues based upon an audit and the general downturn in the economy.

8. The Debtor does not qualify for relief under Chapter 13 of the Bankruptcy Code because his liabilities exceed the statutory limitations imposed by Bankruptcy Rule 109.

9. The Debtor's primary asset is his home in Greenwich Connecticut (the "Home") where he resides with his extended family. The Debtor was recently offered a modification of the mortgage on the Home.

10. In addition to the Home, the Debtor owns 6 apartments in the City of the White Plains (the "Apartments"). Three of the Apartments (referred to as the "Franklin Apartments") are the subject of this motion.

11. The Debtor has proposed a plan which is predicated upon the sale of the Apartments. The Debtor believes that a sale through a broker will yield the highest value and inure to his benefit and the benefit of his creditors which include the IRS and NYS.

THE FRANKLIN APARTMENTS

12. At the outset, it should be noted that the Franklin Apartments are "sponsor units." They are not subject to many restrictions that non-sponsor units are subject to.

10 Franklin Avenue, White Plains, NY - Apt. 3K ("3K")

13. Apt. 3K is a 2 bedroom, 2 bathroom cooperative apartment. The Debtor estimates the value of Apt. 3K to be $220,000. There is no mortgage encumbering Apt. 3K. The Debtor accepted an offer of $217,000.00. A copy of the purchase memo is annexed hereto as Exhibit B. A contract was tendered to the prospective buyer on about October 27, 2016.

10 Franklin Avenue, White Plains, NY - Apt. 2F ("Apt. 2F")

14. Apt. 2F is a 2 bedroom, 2 bathroom cooperative apartment. The Individual Debtor estimates the value to be $220,000.00. There is no mortgage encumbering Apt. 2F. The Debtor accepted an offer of $217,000.00. A copy of the purchase memo is annexed hereto as Exhibit C. A contract was tendered to the prospective buyer on about October 27, 2016.

10 Franklin Avenue, White Plains, NY - Apt. 2P ("Apt. 2P")

15. Apt. 2P is a 2 bedroom, 1 bathroom cooperative apartment. The Individual Debtor estimates the value to be $220,000.00. Wells Fargo Bank, NA ('Wells Fargo") holds a mortgage encumbering Apt. 2P with a balance due of approximately $105,000.00. The Debtor accepted an offer of $217,000.00. A copy of the purchase memo is annexed hereto as Exhibit D. A contract was tendered to the prospective buyer on about October 27, 2016.

16. According to the Broker, Westbrook made offers on the Units in the amount of $215,000.00 per unit. See Exhibit E hereto. This was lower than the accepted offers.

III. THE STAY SHOULD NOT BE LIFTED UNDER SECTION 362(d)(1)

17. In support of the motion, Westbrook argues that the stay should be lifted for "cause" under 11 U.S.C. § 362(d)(1) because the Debtor has not made monthly charges aggregating $33,849.92.

18. Section 362(d)(1) of the Bankruptcy Code sets forth the criteria for vacating the automatic stay and provides in pertinent part, as follows:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

19. Westbrook has failed to demonstrate that the relief from the stay is justified "for cause" under 11 U.S.C. § 362(d)(1). In fact, in this case, Westbrook is adequately protected.

20. Adequate protection is designed to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization. *In re Nice*, 355 B.R. 554,563 (Bankr. N.D. Va. 2006) ("adequate protection is solely a function of preserving the value of the creditor's secured claim as of the petition date due to a debtor's continued use of the collateral").

21 Because the term "adequate protection" is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. *MBank Dallas. N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393 (10th Cir. 1987); *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1086); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Industries Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also *In re JKJ Chevrolet. Inc.*, 190 B.R. 542, 545 (Bankr. E.D.Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

22. In this case, Westbrook is adequately protected for two reasons. First, adequate protection payments have and will continue to be made by the Debtor.

23. Second, the Debtor has substantial equity in the Franklin Apartments. The Debtor's estimated equity is more than $500,000.00.

IV. THE STAY SHOULD NOT BE LIFTED UNDER 11 U.S.C. § 362(d)(2)

24. Section 362(d)(2) provides that the stay should be lifted as to property is such property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2).

25. Here, the cash generated by the sale of the Franklin Apartments will be used to fund the Plan. It will used directly for creditors.

26. The Debtor hopes to confirm the Plan within the next 6 months. It is simply a lengthy process.

27. It is noteworthy that the Debtor was recently approved for a modification of the mortgage on his Home. This was an "open" item in his Chapter 11 case which, now that it has been resolved, will promote confirmation.

WHEREFORE, it is respectfully requested that the motion be denied, conditioned, or deferred and that Westbrook be instructed to cooperate with the Debtor.

Dated: White Plains, New York
November 14, 2016

PENACHIO MALARA LLP

/s/ Anne Penachio
BY:______________________________

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